



**13.3 DISCONTINUATION OF PART OF MOUBRAY STREET,
ALBERT PARK (MOUBRAY STREET COMMUNITY PARK)**

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1. PURPOSE

1.1 The purpose of this report is to:

- 1.1.1 clarify that the road known as part Moubray Street, between Withers Street and Bridport Street West, Albert Park, shown coloured blue on the plan contained in Attachment 1 (**Road**) is a government road situated on Crown land;
- 1.1.2 affirm Council's resolution dated 7 December 2022 to discontinue the Road pursuant to the *Local Government Act 1989 (Vic) (Act)*, noting that the effect of the discontinuance will be that the Road remains in the ownership of the Crown (and not vest in Council in fee simple), and, as such, no easements, rights, or interests will be created or saved over the Road by any public authority; and
- 1.1.3 authorise a request to the Department of Energy, Environment and Climate Action (**DEECA**) (formerly known as Department of Environment Land Water and Planning) to arrange for the reservation of the discontinued road for park purposes, the appointment of Council as a committee of management, and the issue of an appropriate licence authorising Council to undertake the proposed park works (pending reservation of the land and appointment of the committee of management).

2. EXECUTIVE SUMMARY

- 2.1 The Moubray Street Pop Up Park is situated on part of the road known as part of Moubray Street, between Withers Street and Bridport Street West, Albert Park shown coloured blue on the plan contained in Attachment 1 to this report (**Road**).
- 2.2 This section of Road is located adjacent to Albert Park Primary School and has operated as a Pop-Up Park (in temporary form) since 2013.
- 2.3 The Moubray Street Pop Up Park was established as a trial in July 2013 to provide a public open space for the local community and to ease pressure being experienced by the Albert Park Primary School caused by growing enrolments and limited school ground open space.
- 2.4 On 24 May 2016, Council resolved to "preserve the intention to create a permanent public open space in the closed section of Moubray Street, subject to funding".
- 2.5 A commitment has been made by the DEECA to transfer \$1.3 million of Local Parks Program Funding from Cobden Street Pocket Park project to Moubray Street Community Park.



- 2.6 The transformation of the closed road space into a permanent park requires a formal road discontinuance process.
- 2.7 On 7 September 2022, Council resolved to:
- remove the road known as MOUS02-20 part of Moubray Street, between Withers Street and Bridport Street West, Albert Park from Council's Register of Public Roads; and
 - commence the statutory procedures and give notice pursuant to sections 207A and 223 of the *Local Government Act 1989* (Vic) of its intention to discontinue the Road, noting that if the Road is discontinued, the Road will vest in Council in fee simple.
- 2.8 A total of seventeen written submissions were received (noting that seven submissions were received from the one party). Council formally received and considered written submissions at its meeting on 16 November 2022.
- 2.9 On 7 December 2022, Council resolved to discontinue the Road as it considers that the Road is not reasonably required for public use.
- 2.10 In March 2023, Council obtained an old law title search contained as Attachment 2 in this Report, which confirmed that the Road is a government road that is situated on crown land, rather than a local Council road, as initially expected.
- 2.11 By effect of sections 207B(1) and 207B(2) of the *Local Government Act 1989* (Vic), the discontinuance of a government road shall result in the land remaining in the ownership of the Crown, and not vesting in Council's ownership in fee simple.

3. RECOMMENDATION

That Council, now being aware that the road known as part of Moubray Street, situated between Withers Street and Bridport Street West, Albert Park, and shown coloured in blue in Attachment 1 to this Report (**Road**), is a government road situated on Crown land:

- 3.1 Affirms its prior resolution on 7 December 2022 to discontinue the Road.
- 3.2 Notes that the effect of gazettal of the notice of road discontinuance of the Road will be that ownership of the Road will remain with the Crown (and not vest in Council in fee simple) and that no easements, rights or interests will be saved over the Road in favour of a public authority.
- 3.3 Will apply to the Department of Energy, Environment and Climate Action (DEECA) to:
- initiate the reservation of the Road and appoint Council as the committee of management; and
 - issue a licence pursuant to the *Land Act 1958* (Vic) (or as otherwise necessary) to enable Council to access the Road and perform any required works for the development of Moubray Street Community Park as a permanent park, pending the reservation of the land and appointment of Council as committee of management after the proposed discontinuance of the Road has been gazetted.

4. KEY POINTS/ISSUES

- 4.1 The Road is a government road situated upon Crown land, and not a local Council road in private ownership, as assumed in previous reports to Council. Therefore, the legal



effect of discontinuance of the Road will be that the Road will continue to remain in the ownership of the Crown, and not vest in Council in fee simple, as originally anticipated.

- 4.2 Notwithstanding this, Council intends to proceed with the discontinuance of the Road, with the support of DEECA. Given that the legal effect of the Road discontinuance is that the land will remain in the ownership of the Crown, Council considers that the most practical course of action is for Council make arrangements with DEECA to initiate the reservation of the land and to appoint Council as committee of management.
- 4.3 Council has discussed this approach with DEECA, which is generally in support of the proposal.
- 4.4 The reservation process is expected to be lengthy and can take up to 12 months or more. Accordingly, it is also proposed Council seeks a licence pursuant to the *Land Act 1958* (Vic) (or as otherwise necessary) after the Road has been discontinued, to provide Council a right to access and perform works for the development of Moubray Street Community Park as a permanent park.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Council has notified the Crown Land Division at DEECA in relation to the proposed discontinuance of the Road.
- 5.2 Council has engaged in preliminary discussions with DEECA to confirm the extent of any assistance required from Council to assist DEECA in initiating the reservation of the Road after it has been discontinued.
- 5.3 Further to its preliminary discussions with DEECA, Council is in the process of seeking quotations from its surveyors for the preparation of an Original Plan for the Road. The Original Plan is to be submitted to the Surveyor-General Victoria for its certification to facilitate DEECA's reservation of the land relating to the Road (after this has been discontinued).
- 5.4 To the extent that no responses have been received from any relevant service authorities, Council is endeavouring to confirm with any relevant service authorities that it does not hold any concerns with the proposed Road discontinuance, as amended.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Refer to Council's prior reports relating to this matter dated 7 September 2022, 16 November 2022 and 7 December 2022. Noting that the Road is a government road situated on Crown land, and by effect of clause 3(b) of Schedule 10 of the *Local Government Act 1989* (Vic), Council has the power to discontinue the Road, but does not have the power to sell the land from that Road or retain the land or transfer it to itself.

7. FINANCIAL IMPACT

- 7.1 Refer to Council's prior reports relating to this matter dated 7 September 2022, 16 November 2022 and 7 December 2022.

8. ENVIRONMENTAL IMPACT

- 8.1 Refer to Council's prior reports relating to this matter dated 7 September 2022, 16 November 2022 and 7 December 2022.



9. COMMUNITY IMPACT

9.1 Refer to Council's prior reports relating to this matter dated 7 September 2022, 16 November 2022 and 7 December 2022.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 Refer to Council's prior reports relating to this matter dated 7 September 2022, 16 November 2022 and 7 December 2022.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 A detailed outline of the timeline for implementation of the project was contained in Council's prior reports relating to this matter dated 7 September 2022, 16 November 2022 and 7 December 2022.

11.1.2 The following are updated timelines based on the additional steps for the resolution of land tenure issues outlined in this report:

- upon resolution of Council, the preparation by Council's surveyor of an Original Plan (OP) to support titling of the discontinued road parcel will be concluded. This will enable the gazettal process to commence;
- once gazettal of the discontinuance has been completed, officers will work with DEECA to have the road parcel reserved for the purposes of a public park and to have Council appointed as Committee of Management of the road parcel;
- in parallel with the aforementioned, Council will apply to DEECA to obtain a licence agreement to allow Council to proceed with the construction works whilst the road parcel whilst DEECA undertakes the processes to reserve the land and appoint Council as Committee of Management;
- it is anticipated that the CoM process will take 12-months.
- concurrently to the land tenure issued being resolved, the detailed design of the park is anticipated to be completed in mid-August 2023;
- request for Tender for the construction contract to be released in mid November 2023 with anticipated tender award at the end of February 2024; and
- anticipated construction commencing in late March 2024 with anticipated completion in mid to late June 2024.

11.2 COMMUNICATION

11.2.1 Refer to Council's prior reports relating to this matter dated 7 September 2022, 16 November 2022 and 7 December 2022.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

1. [Site Plan](#)
2. [Old Law Title Search for Road](#)